

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

REGAL FABRICS, INC.,)
Plaintiff,)
v.) Civil Action No. 04-10961-RWZ
KOBA, INC., an Illinois corporation;)
IBR CORPORATION, d/b/a Harbortown Division,)
an Illinois corporation; and)
SHOPKO STORES, INC, a Wisconsin corporation,)
Defendants.)

ANSWER AND COUNTERCLAIM

Defendants Koba, Inc.; IBR Corporation and Shopko Stores, Inc. (collectively “Defendants”), by their attorneys, answer the Amended Complaint of Regal Fabrics, Inc. (“Plaintiff”) as follows:

Parties

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 and therefore deny same.
2. Defendants admit the allegations of paragraph 2.
3. Defendants admit the allegations of paragraph 3.
4. Defendants admit the allegations of paragraph 4.

Jurisdiction And Venue

5. This paragraph asserts conclusions of law to which no answer is required. To the extent that an answer is required, Defendants deny these allegations.

6. This paragraph asserts conclusions of law to which no answer is required. To the extent that an answer is required, Defendants deny these allegations.

7. This paragraph asserts conclusions of law to which no answer is required. To the extent that an answer is required, Defendants deny these allegations.

8. This paragraph asserts conclusions of law to which no answer is required. To the extent that an answer is required, Defendants deny these allegations.

Claim for Relief

COUNT I: Copyright Infringement

9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 and therefore deny same.

10. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 and therefore deny same.

11. Defendants deny the allegations of paragraph 11.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 and therefore deny same.

13. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 and therefore deny same.

14. Defendants deny the allegations of paragraph 14.

15. Defendants admit the allegations of paragraph 15.

16. Defendants deny the allegations of paragraph 16.

17. Defendants deny the allegations of paragraph 17.

18. Defendants deny the allegations of paragraph 18.

19. Defendants deny the allegations of paragraph 19.

20. Defendants deny the allegations of paragraph 20.
21. Defendants deny the allegations of paragraph 21.
22. Defendants deny the allegations of paragraph 22.
23. Defendants deny the allegations of paragraph 23.
24. Defendants deny the allegations of paragraph 24.
25. Defendants deny the allegations of paragraph 25.

FIRST DEFENSE

Defendants' liability is limited by Plaintiff's omission of Copyright notice from the work at issue.

SECOND DEFENSE

Defendants' conduct constitutes innocent intent.

THIRD DEFENSE

Plaintiff's claims are barred by the Statute of Limitations.

FOURTH DEFENSE

Plaintiff's claims are barred because its copyright(s) is(are) invalid.

FIFTH DEFENSE

Plaintiff's claims are barred by its own fraud.

SIXTH DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel.

SEVENTH DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

WHEREFORE, Defendants Koba, Inc.; IBR Corporation and ShopKo Stores, Inc. pray that this court:

- a. Dismiss with prejudice the Complaint filed in this matter;

- b. Award Defendants all costs, expenses and attorneys' fees they have incurred in connection with defending this action; and
- c. Award Defendants such other and further relief that justice so requires.

COUNTERCLAIMS

PARTIES

1. Plaintiff-in-counterclaim Koba, Inc. is an Illinois corporation with a principal place of business at 1329 North Clybourn in Chicago, Illinois.
2. Plaintiff-in-counterclaim IBR Corporation is an Illinois corporation doing business as Harbortown Division with a principal place of business at 4800 Roosevelt Rd. in Chicago, Illinois.
3. Plaintiff-in-counterclaim ShopKo Stores, Inc. is a Wisconsin corporation with a principal place of business at 700 Pilgrim Way in Green Bay, Wisconsin.
4. Upon information and belief, defendant-in-counterclaim Regal Fabrics, Inc. is a privately held corporation duly organized under the laws of Massachusetts with a principal place of business at 14 Birch Road in Middleton, Massachusetts.

FACTS

5. Defendant-in-counterclaim Regal Fabrics, Inc. ("Regal") alleges copyright infringement of the "fish and bear" fabric pattern registered in the U.S. Copyright Office as VA-092-293 and dated August 14, 2001.

6. Regal's "fish and bear" fabric pattern is itself a copy of a common pattern made up of common elements wherein numerous substantially similar patterns currently exist and have existed in the public domain since before 2001.

7. Regal's "fish and bear" fabric pattern lacks the modicum of originality necessary for the copyright to be valid.

COUNT I

(DECLARATORY JUDGMENT; INVALIDITY OF COPYRIGHT)

8. Plaintiffs-in-counterclaim repeat and reallege the allegations contained in paragraphs 1 through 7 of this counterclaim as if fully set forth herein.
9. Copyright VA-092-293 belonging to defendant-in-counterclaim Regal Fabrics, Inc. is invalid for lack of originality as required by the U.S. Copyright Act (17 U.S.C. § 101 *et seq.*).

RELIEF REQUESTED

WHEREFORE, plaintiffs-in-counterclaim Koba, Inc.; IBR Corporation and ShopKo Stores, Inc. pray that this Court:

- a. Enter a judgment in their favor on all of their counterclaims;
- b. Award Koba, Inc.; IBR Corporation and ShopKo Stores, Inc. all damages they have suffered as a result of defendant-in-counterclaim's assertion of rights in an invalid copyright;
- c. Enter a judgment declaring copyright VA-092-293 invalid for lack of originality required by the U.S. Copyright Act;
- d. Award Koba, Inc.; IBR Corporation and ShopKo Stores, Inc. such other and further relief that justice so requires.

Respectfully Submitted,

**KOBA, INC.; IBR CORPORATION and
SHOPKO STORES, INC.**

By their attorneys,


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(617) 345-3000

Dated: August 6, 2004

00849853

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by (hand) (mail) on Aug. 6 2004 